

**J. C. Penney Co., Inc. and International Union,
United Plant Guard Workers of America
(UPGWA), Petitioner. Case 4-RC-18156**

August 31, 1993

ORDER DENYING REVIEW

BY CHAIRMAN STEPHENS AND MEMBERS
DEVANEY AND RAUDABAUGH

The National Labor Relations Board has considered the Employer's request for review of the Acting Regional Director's Decision and Direction of Election (pertinent portions are attached). The request for review is denied as it raises no substantial issues warranting review.¹

¹ The only issue raised on review was whether the Acting Regional Director erred in finding that the Employer's chargeback clerk is not a guard within the meaning of Sec. 9(b)(3) of the Act.

APPENDIX

**Acting Regional Director's Decision and Direction
of Election**

The Employer, a Delaware corporation, is engaged in the operation of department stores throughout the United States, including a store located at the Gallery II, Philadelphia, Pennsylvania. The Petitioner seeks to represent a unit of guards. The parties stipulated that the 14 loss prevention officers, 4 package pickup receptionists, 4 cash room employees, 5 fitting room attendants, and 5 switchboard receptionists are guards who should be included in the unit. The parties also stipulated that employees who work an average of 4 hours per week during the 13-week payroll period immediately preceding the election, and perform guard work at least 10 percent of this time, are regular part-time employees who should be included in the guard unit. Finally, the parties agreed that switchboard/receptionist, Desiree Smith, should be permitted to vote subject to challenge. The Employer, contrary to the Petitioner, takes the position that the stockroom receiver and chargeback clerk are also guards and should be included in the unit.

The Employer's Gallery II store is a five-floor building with a receiving/dock area and stockroom located at its underground or bottom level. The next floor up is the mall level which includes the children's department and the catalog department. The next level is the street level where the jewelry, cosmetics, shoes, package pickup, and the men's departments are located. The package pickup area is the area designated for all employees to use when entering and exiting the store. The security office is also located on street level. The second floor consists of the women's departments, the lunchroom, and locker room. The third floor, or top floor, consists of home furnishings, lingerie and sleepwear, a gift department, a portrait studio, and management offices, including the cash room and vault.

Both the stockroom receiver and the chargeback clerk report to the stockroom manager and work primarily in the receiving/dock area located on the bottom level. Most of the stockroom receiver's time is spent receiving and checking

freight bills of inbound merchandise, guarding against pilferage and damage to the merchandise, logging in short cartons, and completing pilferage or damage reports. Only the stockroom receiver and the stockroom and operations managers have keys that open four rolling doors where trucks dock to load and unload merchandise. Truckdrivers must have the stockroom receiver's or stockroom manager's authorization to gain access to these doors. The stockroom receiver is also responsible for permitting access into the store for authorized subcontractors and vendors, and for checking their belongings or toolboxes when they exit the store to ensure that merchandise is not taken off the premises. Approximately 30 to 40 percent of the stockroom receiver's time is spent monitoring access to the doors and checking contractor's packages and toolboxes. The stockroom receiver also makes sure that store employees do not exit from the bottom level door.

Almost all of the chargeback clerk's time is spent on the bottom level of the store in the chargeback room. This room has one concrete wall, three ceiling to floor wire mesh walls, and a self-locking door. The chargeback room is locked when the chargeback clerk is not there. The chargeback clerk, the stockroom manager and the operations manager are the only persons who have the key to the door. The chargeback clerk is primarily responsible for ensuring that merchandise to be sent back to vendors is returned and that the Employer receives credit. The chargeback clerk enters returns on a computer, packages the returns, and records the shipments on the shipping log. She is also responsible for checking in fine jewelry, often with the assistance of either a jewelry associate or jewelry manager. The jewelry manager takes the merchandise to the jewelry department. If the chargeback clerk is unable to process all the fine jewelry on a given day, this merchandise is taken to the cash room where it is put into the vault by cash room employees. Approximately twice each week, for a total of approximately 30 minutes, the chargeback clerk goes to other areas of the store to pick up merchandise to be returned to vendors. The chargeback clerk is responsible for all merchandise in her area and is expected to question employees who enter her area if she believes they have no business there. She may call for the stockroom manager's assistance in these situations. The record does not disclose how much time the chargeback clerk spends denying or limiting access to the chargeback room or if she has ever performed this duty. The record does disclose that approximately 20 percent of her time involves contact with other employees but the record does not show the specific nature of that contact.

The Employer also employs 14 loss prevention officers who are supervised by the loss prevention manager. While not all of the prevention officers are uniformed, they all carry handcuffs and radios, and have been trained in shoplifting prevention and detention techniques. None of the loss prevention officers are assigned to the receiving/dock area at any time, but they are available and within reach by phone. Loss prevention officers monitor cameras which scan the receiving dock area, including the entrance to the chargeback room. Unlike the loss prevention officers, neither the stockroom receiver nor the chargeback clerk has received detention technique training, they are not armed, nor are they expected to apprehend employees or nonemployees. They also would not be involved in investigations of theft. They do receive the same training as other store employees concerning

shoplifting and theft prevention. If the stockroom receiver or chargeback clerk confronts an unauthorized person, a suspected theft, or discover merchandise being taken out of the store by a vendor or subcontractor, they are required to notify the stockroom manager or the operations manager first, who in turn would notify the loss prevention officers. The stockroom receiver and chargeback clerk are considered part of the merchandise handling department whereas the loss prevention officers are in a different department.

On September 23, 1988, a Decision and Direction of Election issued in Case 4-RC-16839 wherein the stockroom receiver and chargeback clerk were found not to be guards and were excluded from the guard unit. In a Supplemental Decision which issued in that case on November 28, 1988, the classifications of employees found to be guards, the cash room employees, office receptionists, fitting room attendants, loss prevention officers, and package pickup receptionists were found to share a community of interest.

Section 9(b)(3) of the Act defines a "guard" as "any individual employed . . . to enforce against employees and other persons rules to protect property of the employer or to protect the safety of persons on the employer's premises" It is the nature of the duties of guards and not the

percentage of time which they spend in such duties which is controlling. *Walterboro Mfg. Corp.*, 106 NLRB 1383, 1384 (1953). The duties of the chargeback clerk described in Case 4-RC-16839 appear to be identical to the duties of the chargeback clerk in the instant proceeding. Thus the chargeback clerk is primarily engaged in receiving, packing, and shipping merchandise, and accounting for the fine jewelry. Moreover, unlike the coinroom employees in *Brink's Inc.*, 272 NLRB 868 (1985), cited by the Employer, the chargeback clerk is not bonded, not confined to an area that is locked at all times, and is not required to restrict access of unauthorized persons through the use and possession of a firearm. Although the chargeback clerk has same contact with employees, the record fails to show that she enforces rules against those employees, or if she does, whether that duty constitutes more than a minor and incidental part of her overall, nonguard duties. In these circumstances, I find no reason to alter the conclusion that the chargeback clerk is not a guard. Accordingly, I shall exclude the chargeback clerk from the unit. See *Hoffman Security*, 302 NLRB 922 (1991); *Big Y Foods*, 238 NLRB 355, 858 (1978); *Watch Monitors, Inc.*, 128 NLRB 903, 904 (1960).